

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	JUDGE DONALD C. NUGENT
	)	
Plaintiff,	)	CASE NO. 1:16 CR 93
	)	
v.	)	
	)	<u>TRIAL MEMORANDUM</u>
	)	
JERRY SIMS,	)	
	)	
Defendant.	)	

The United States of America, by and through counsel, Carole S. Rendon, United States Attorney, and Ranya Elzein and Margaret Sweeney, Assistant United States Attorneys, submits the following memorandum regarding evidentiary questions or other legal issues that may reasonably be anticipated to arise at trial.

Respectfully submitted,

CAROLE S. RENDON  
United States Attorney

By: /s/ Ranya Elzein  
Ranya Elzein  
Margaret Sweeney  
Assistant United States Attorneys  
801 West Superior Avenue, Suite 400  
Cleveland, OH 44113  
(216) 622-3929/3990  
(216) 522-8355 (facsimile)  
Ranya.Elzein@usdoj.gov  
Margaret.Sweeney@usdoj.gov

## **TRIAL MEMORANDUM**

Pursuant to the Court's Criminal Trial Order, ECF No. 4, the Government hereby submits that the following evidentiary issues may arise at trial.

### **A. Video Recording and Transcripts**

The United States intends to introduce a video recording depicting: (1) law enforcement interviews of Defendant and of Dominique Robinson, the man with whom Defendant was arrested, and (2) conversations between Defendant and Dominique Robinson prior to these interviews, and government counsel has notified defense counsel of the same. The statements of Dominique Robinson are admissible non-hearsay statements because they are not offered for their truth. Rather, they are offered to provide context to Defendant's statements.

Additionally, the government has prepared a transcript of portions of the video that will play contemporaneously with the video. The government has provided this transcript to defense counsel, as well as submitted the relevant pattern jury instruction regarding recordings as an aid in receiving evidence.

### **B. Defendant's Expert Witness**

Defendant advised the United States that he intends to tender an expert in the matter of "DNA transfer." The United States has requested but not yet received a written summary of this expert testimony describing the witness's opinions and the bases and reasons for those opinions. *See* Fed. R. Crim. P. 16(b)(1)(C). Accordingly, the government is unable to determine whether Defendant's proposed witness comports with Rule 702; therefore, the government intends on objecting to Defendant's expert witness.

### **C. Separation of Witnesses; Presence of Government Agent at Trial**

The government respectfully requests that the Court issue a separation-of-witness order pursuant to Federal Rule of Evidence 615. The government will designate one law enforcement

officer, as its representative in this case to be present at counsel table throughout the trial. His presence in the courtroom during trial is essential to the presentation of the government's case. *See* Fed. R. Evid. 615(b) (specifically excluding from a sequestration order "an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney"); Fed. R. Evid. 615(c) (providing an additional exception for essential witnesses).

Respectfully submitted,

CAROLE S. RENDON  
UNITED STATES ATTORNEY

By: /s/ Ranya Elzein  
Ranya Elzein  
Assistant United States Attorney  
801 West Superior Avenue, Suite 400  
Cleveland, OH 44113  
(216) 622-3929  
(216) 522-8355 (facsimile)  
Ranya.Elzein@usdoj.gov

/s/ Margaret Sweeney  
Margaret Sweeney  
Assistant United States Attorney  
801 West Superior Avenue, Suite 400  
Cleveland, OH 44113  
(216) 622-3709  
(216) 522-8355 (facsimile)  
Margaret.Sweeney@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of November, 2016, a copy of the foregoing Government's Trial Memorandum was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this system through the Court's system.

/s/ Ranya Elzein  
Ranya Elzein  
Assistant U.S. Attorney